

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Nebraska Resources)	Docket No. NG-0053
Company, LLC Seeking a Certificate of)	
Public Convenience and Necessity)	
Authorizing It To Operate As A)	
Jurisdictional Utility in Nebraska and)	
Approval of Pro Forma Tariff)	

COMMENTS OF THE PUBLIC ADVOCATE

On March 5, 2008, Hearing Officer Frank Landis entered a Hearing Officer Order Requesting Comment Regarding Proposed Schedule and Scope of Hearing. Such Order requested that parties submit comments regarding the scope of these proceedings and the progression schedule set out in said Order and directed that such comments be filed by 5:00 p.m. on March 13, 2008. Pursuant to such Order, the Public Advocate submits the following comments.

I. One-Phase Versus Two-Phase Proceeding

It is the understanding of the Public Advocate that the Hearing Officer Order of March 5, 2008 determined that consideration of the Application of Nebraska Resources Company, LLC ("NRC") will be addressed in a single phase and that a single hearing will consider both the issues relating to certification and the issues relating to rate determination that are presented by NRC's Application. The Public Advocate understands that at least some of the parties might have preferred that consideration of such issues be divided into two phases, with issues relating to certification to be considered in an initial phase and issues relating to rate determination being considered in the context of a second phase, if the Commission decided certification issues in favor of NRC. The Public Advocate anticipates

that other parties may have specific comments as to whether a one-phase or two-phase approach may be more appropriate.

The Public Advocate concurs with the thought that the consideration and determination of NRC's Application must be thorough. However, the Public Advocate is also understanding that NRC may well face some practical limitations as to whether a project such as the intrastate pipeline proposed by NRC will be feasible unless these proceedings can be conducted and concluded in a fashion that is sufficiently expeditious. For example, NRC may well be facing a need to meet certain target dates and/or other practical deadlines that might have to be met as a practical matter in order for NRC's proposed pipeline project to proceed. However, if such target dates and/or other practical deadlines are to drive the speed with which these proceedings must be concluded and/or whether a one-phase or two-phase procedural approach should be applied to the Commission's processing of this case, NRC should provide the Commission and all parties with clear notice of exactly when such applicable target dates and/or other practical deadlines will actually fall and demonstrate that such dates are "hard" dates, rather than mere "soft" projections of when someone hopes to get the project to a particular stage.

Some of the parties may have more interest in certification issues than rate determination issues and the converse may be true for other parties. Some parties may have an equal level of interest in both categories of issues. Without meaning to prejudge matters that may unfold as this case progresses, it is the current thought of the Public Advocate that more time and attention of the Public Advocate may be required with respect to rate-related

issues than certification-related issues. However, for other parties, the relative need to address these respective issues may be different.

The Public Advocate urges the Commission, upon consideration of the comments of all other parties, to conduct these proceedings as expeditiously as possible, while still being consistent with affording due process to the parties and allowing the Commission an adequate opportunity to carefully consider the positions of the respective parties on the merits.

II. Progression Schedule

The progression schedule set forth in the Hearing Officer's March 5, 2008 Order is an ambitious one. Were it not for the existence of whatever practical time constraints that NRC suggests must be met for the proposed pipeline project to go forward at all, the Public Advocate would suggest that the procedural timetable set forth in the March 5, 2008 Hearing Officer Order might be too aggressive. Of course, depending upon how clearly NRC can articulate the existence of actual "drop dead" dates that may impact whether it is even practical for NRC to proceed with the proposed pipeline project, it may be that the expedited schedule set forth in the March 5, 2008 Hearing Officer Order is the only schedule that can be followed in this case. However, if any "drop dead" dates are sufficiently off into the future or can't be specifically articulated by NRC, the Commission and the parties might all benefit from either a reconsideration of a possible two-phase approach to the issues presented or a slightly elongated time frame for interveners to pursue discovery and submit testimony.

III. Particular Issues

The Public Advocate recognizes that different parties will undoubtedly have some differing views in terms of which issues may be more important to such parties. Without

meaning to diminish the relative importance that any other party may attach to other issues presented, two issues are presented by NRC's Application that initially appear to be of great importance to the Public Advocate.

A. Negotiated Rates

The first such issue is whether rates to be charged to any customer falling within the SNGRA's statutory definition of "jurisdictional customer" can be or should be set based on negotiations between a utility and any such jurisdictional customer or a group of jurisdictional customers.

As the Commission is well aware, every rate made, demanded or received by any natural gas public utility shall be "just and reasonable" pursuant to Neb. Rev. Stat. §66-1825(1). The Public Advocate certainly recognizes that the SNGRA grants the Commission discretion whether to authorize "banded rates" or "mechanisms for the determination of rates by negotiation." Neb. Rev. Stat. §66-1855(1) and (2). However, these statutory provisions are not the ultimate answer to the question of whether banded rates or negotiated rates are appropriate in any given circumstances. Instead, they are only the starting point for an inquiry as to whether a natural gas public utility can demonstrate to the Commission that any particular proposal for banded rates or mechanisms to determine rates by negotiations is appropriate and would result in "just and reasonable" rates.

To say that a rate has been negotiated at a level lower than a supposed "recourse price" that may have been set quite arbitrarily is certainly not the answer to the question of whether such a rate is truly "just and reasonable." Rather, it simply begs the question of how the "recourse price" was determined, what factors were part of whatever supposed negotiations

among whatever entities may have preceded the filing of NRC's Application and whether an applicant for certification authority even has the authority to "negotiate" any rate, especially one that may be purely hypothetical at the time of the supposed negotiations.

The Public Advocate urges the Commission to recognize that the obligation to ensure that rates to be charged to Nebraska ratepayers be "just and reasonable" carries with it the need for a detailed and careful review of any proposed rate(s). Any suggestion that a "limited" review is appropriate is the first step down the slippery slope to what would amount to no real review at all. Thus, if the Commission should rule in NRC's favor on the certification-related issues, the Public Advocate respectfully submits that the Commission's consideration of the rate-determination issues should be no less demanding than the consideration afforded to rate-determination issues in the context of a contested natural gas rate case involving an existing jurisdictional utility.

B. Potential Stranded Costs

The second issue of particular initial concern to the Public Advocate is the need to consider the potential downside if the pipeline facility proposed by NRC in its Application would ever become stranded. In other words, could the undoubtedly substantial costs of partially or fully constructing the pipeline facility ever wind up being something that Nebraska jurisdictional ratepayers might wind up having to pay for even if future developments occur in such a fashion that such jurisdictional ratepayers are not actually receiving the benefit of obtaining a significant portion of their gas supply through service provided by the proposed pipeline.

Among other obvious issues, questions are presented as to whether the proposed pipeline facility is fully subscribed or whether excess capacity will exist. These matters will demand and deserve careful consideration in the course of the Commission's processing of this case.

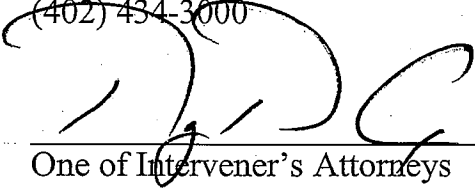
C. Concluding Comments Regarding Particular Issues Identified Above

Both the procedural schedule ultimately adopted by the Commission and the hearing and deliberation in this case must allow for a full and careful review of the negotiated rate issue and the potential stranded costs issue identified above.

DATED this 13th day of March, 2008

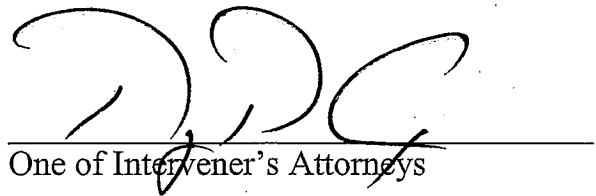
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments was served by U.S. Mail, sufficient postage prepaid on the 13th day of March, 2008, upon the individuals listed on the attached copy of Appendix A from the Hearing Officer's March 5, 2008 Order.



One of Intervener's Attorneys

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Appendix A
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APPENDIX A

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